IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 466 OF 2007

M/s. Jayashree Executive Food Stuff & Ors... ....Petitioners.
V/s
Rupee Cooperative Bank Ltd. & Ors..... ....Respondents.

Mr.G.S.Godbole, Adv. For the petitioners.

Mr.R.G.Ketkar, Adv. For respondent Nos. 1 & 2.

Mr.A.A.Deshpande, Adv. For respondent Nos. 4, 5 & 6.

CORAM: A.P.DESHPANDE, J.
5/7/07

PC:

This petition is filed by three petitioners which are partnership firm. The petitioners were carrying on business of running an eating house and allied activities. The petitioners-firm had borrowed money from respondent No.1-bank. The petitioners failed to repay dues of the bank and thus respondent No.1 was constrained to approach the authority under section 101 of the Maharashtra Cooperative Societies Act. Respondent No.2 issued recovery certificate in favour of respondent No.1 and against the petitioners, under section 101 of the Act. The petitioners tried to challenge the recovery certificates issued by the Assistant Registrar by filing writ petition in this Court. This Court declined to entertain the writ petition, it being of the view that there exists alternate efficacious remedy in the form of revision under section 154 of the act before the Divisional Joint Registrar and hence petitioners withdrew the writ petition for adopting appropriate remedy. According to the learned counsel for the respondent No.1 petitioners did not question the correctness of the recovery certificates by filing a revision

under section 154 presumably for the reason that the petitioners would have been required to deposit 50% of the amount covered by recovery certificates as is mandated by sub-section 2A of section 154. The respondent No.1 attached the properties of the petitioners and took possession of the same. The petitioners had moved the respondent No.1-bank after bank took possession of the properties, both movable and immovable by submitting proposal for rehabilitation. Pending consideration of rehabilitation proposal an ad-hoc arrangement was sought to be worked out between the petitioners and respondent No.1. Under the ad-hoc arrangement the petitioners had issued a cheque of Rs.10 lacs dated 14.6.05 and had also issued two post dated cheques dated 15.7.05 and 14.8.05 for Rs.5 lacs and Rs.10 lacs respectively. According to the petitioners, under the terms of MOU petitioners were entitled to to be placed in physical possession of the movable and immovable properties attached by the respondent No.1-bank. However according to respondent No.1-bank, obligation to restore the possession was only after payment of Rs.25 lacs. The said issue looses its significance for the reason that the rehabilitation proposal of the petitioners did not find favour with the respondent-bank and thus the interim arrangement sought to be made under the memorandum of understanding has no bearing on the issue which falls for adjudication in this writ petition.

2. The Special Recovery Officer of the bank issued proclamation with a view to auction the attached properties. The petitioners filed revision application against the proclamation dated 17.8.2006 which proposed to sell properties in public auction. The petitioners termed the action proclamation by public auction as an order amenable to a revisional jurisdiction under section 154 of the Act. The revisional authority has rejected the revision and aggrieved thereby the present petition has been

filed. Learned counsel for the petitioners has tried to demonstrate that under the memorandum of understanding the respondent No.1 ought to have put the petitioners in possession of movable and immovable properties as the petitioners had paid sum of Rs.10 lacs. Per contra learned counsel appearing for the bank submits that restoration of possession was subject to payment of Rs.25 lacs. Be it as it may, what is relevant to note is that the memorandum of understanding only deals with the issue of making an interim arrangement, without affecting legal rights of the parties, pending consideration of the rehabilitation proposal. As the rehabilitation proposal did not find favour with respondent No.1 and failed to materialise the memorandum of understanding does not impinge upon any legal rights of respective parties. The recovery certificates are intact so also rights of the respondent No.1 under the said recovery certificates. Alleging breach of the memorandum of understanding which only deals with ad-hoc interim arrangement, clearly stipulates that the same does not affect the legal right of the parties and all remedies and actions would be open to the parties. Reading of the memorandum of understanding clearly reveals that the interim arrangement was for a period of only three months, within which time a final decision on the rehabilitation proposal was to be reached. If in case respondent No.1 has committed any breach to the interim arrangement sought to be regulated for a period of three months, pending consideration of rehabilitation proposal it shall be open for the petitioners to take up appropriate proceedings before the appropriate forum for redressal of their grievances. The alleged breach of conditions of memorandum of understanding by respondent No.1 does not result in negation of rights of the bank to enforce and execute recovery certificates possessed by it under section 101 of the act. The respondent No.1 has submitted that as of now the 1st respondent has to recover a sum of more

than Rs.5 crores. It may be stated that two of the partners are prosecuting the case, whereas respondent Nos.4, 5 and 6 have informed the bank to sale the properties in public auction with a view to liquidate the dues. Learned counsel for the petitioners pointed out that the revisional authority has held that as majority of the partners are consenting for auction sale of the mortgaged properties the revision application filed by only one partner cannot be considered. This finding according to the learned counsel for the petitioners is wholly unsustainable and contrary to the provisions of the Partnership Act. Learned counsel for respondent No.1 does not dispute the position. Though such an observation is made by revisional authority, it has considered the objections raised by the revisional applicants and hence the judgment and order impugned in this petition does not require to be interfered with. Perused the impugned order passed by the revisional authority. Same does not call for any interference. Hence writ petition is summarily dismissed.